IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

RCRev..No. 390 of 2006()

RCA.106/2002 of ADDL.DISTRICT COURT (ADHOC)-III, THALASSERY
RCP.253/2000 of PRL.M.C.,KANNUR
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: REVISION PETITIONER/RESPONDENT:

M.P.SAIDU MUHAMMED THANGAL,
AGED 61 YEARS, S/O.SAIDU ABDULLAH,
KATTILEPPALLI, PAPPANASSERY.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.T.P.SAJID

RESPONDENTS:

P.T.P. ABDUL GAFUR,
S/O.MARIYAUMMA, KATTILEPALLI,
PAPPANASSERY.

BY ADV. SRI.K.I.MAYANKUTTY MATHER

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

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R.C.R.NO.390 OF 2006

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DATED THIS THE 8TH DAY OF DECEMBER, 2006.

O R D E R

Basheer, J.

Tenant of a commercial building who was suffered an order of eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (for short 'the Act') has preferred this revision petition. The appellate authority found that the petitioner/tenant had kept the rent in arrears without any valid reasons and that the landlord had established his need to start a business in the petition schedule building. Accordingly, eviction was ordered. Hence this revision petition under Section 20 of the Act.

2. Respondent/landlord had sought eviction contending inter-alia that the building was taken on rent by the tenant agreeing to pay Rs.45/- per month in terms of a kychit dated December 15, 1982. He had kept the rent in arrears since August 1986. It was further averred that the tenant had been doing “medical practice” in the building though he was not qualified at all. He was not depending on the income that he was getting from the business. Other buildings were available in the locality if the tenant wanted to shift his engagement/occupation. It was also averred that the building was in a dilapidated condition because of the careless user by the tenant and it will have to be reconstructed before the landlord

could use it for his own occupation to start a business.

3. The claim for eviction was resisted by the petitioner/tenant. It was contended by him that the rent had fallen in arrears only because of the refusal of the landlord to accept the same. The bonafide need set up was only a ruse to evict him. The landlord is conducting business in bricks and tiles in the room adjoining to the petition schedule building. It was further contended by the petitioner that he was entirely depending on the income that he was getting from the "Vaidyasala" that he was conducting in the building. No other suitable building was available in the locality to shift his business.

4. The landlord got himself examined before the Rent Control Court as PW.1 and Exts.A1to A5 were marked on his side. Petitioner/tenant was examined as RW.1 and Exts.B1 to B7 were also marked on his side. The report of the Advocate Commissioner was marked as Ext.C1. The Rent Control Court took the view that the landlord was not entitled to get an order of eviction under Section 11 (2)(b) (arrears of rent) since the tenant had deposited the entire arrears during the pendency of the proceedings. As regards the claim for bonafide own occupation, the Rent Control Court held that the landlord had established his need. However, the court held that the tenant was entitled to get the protection of the second proviso to Section 11(3) of the Act since the landlord failed to prove that the tenant had other source of income or that any other suitable building was available in the locality for the tenant to shift his business. The trial court further held that the claim for reconstruction was not established by the landlord.

5. The above order of the trial court was challenged by the landlord before the Rent Control Appellate Authority. After re-evaluating the oral and documentary evidence on record, the appellate authority found that the tenant had willfully kept the rent in arrears despite statutory demand notice. It was also found that the tenant had failed to discharge the burden cast upon him to prove that he was entitled to get the protection of the second proviso to Section 11(3) of the Act. As regards the claim for eviction under Section 11(4)(iv) of the Act, the appellate authority found that the trial court had totally misdirected itself while considering the above ground.

6. Learned counsel for the petitioner/tenant was heard at length. The pleadings and oral testimonies of the parties were made available for perusal. We have also heard the respondent/landlord who appeared on caveat.

7. It had come out in evidence that the tenant had kept the rent in arrears at the time when the statutory demand notice was issued to him. It is true that the tenant had deposited the arrears of rent before the trial court during the pendency of the proceedings. However, it had come out in evidence that even on earlier occasions the tenant had committed default in payment of rent and the landlord had to initiate proceedings against him for recovery of the rent. The tenant had paid the rent upto August 1986 pursuant to the order passed by the Rent Control Court in R.C.P.No.147/1983 and R.C.A.No.94/1986. He kept the rent in arrears yet again. The appellate authority had adverted to the above aspects and found that the remittance of rent during the pendency of the proceedings would not absolve

the liability of the tenant. It was therefore that the appellate authority had passed an order of eviction under Section 11(2)(b) of the Act. We are satisfied that the court below was justified in holding that the petitioner/tenant had kept the rent in arrears willfully and without any valid reason.

8. It is pertinent to note that the trial court had found that the need set up by the respondent/landlord was bonafide and genuine. However, the trial court had given the benefit of the protection envisaged under the second proviso to Section 11(3) of the Act to the tenant. The trial court took the view that the landlord had not established that the tenant was depending on the income from the business in the schedule building or that he had any other source of income. Curiously, it was also held that the landlord had failed to prove that other buildings were available in the locality to enable the tenant to shift his business. We are afraid the above findings entered by the trial court are wholly unsustainable.

9. It is trite that the burden is entirely on the tenant to prove that he is entitled to get the benefit of the second proviso to Section 11(3) of the Act. The tenant has to adduce evidence and establish that he is depending on the income which he is getting from the business or occupation in the tenanted premises. Significantly, the tenant had not adduced any evidence to show what was the income that he was getting from the business. He had not produced any accounts or such other documents in support of his plea that he had no other source of income. In this context, it may also be noticed that petitioner had stated that he

was conducting a "Vaidyasala". He claimed that he had been treating patients also. But he conceded that he had no qualification of any kind to treat patients. We have adverted to this aspect only to state that the tenant had totally failed to establish that he was conducting any business worth the name in the premises. As regards the second limb of the 2nd proviso, the landlord had specifically pointed out three vacant rooms available for rent in the locality. Building numbers and names of the landlords were mentioned by PW.1. But the tenant admitted that he had not made any enquiry about the availability of other rooms in the locality. Thus the tenant had totally failed in discharging his burden. In our view, the appellate authority was therefore entirely justified in holding that the tenant was not entitled to get the protection of the second proviso. Therefore, the finding entered by the appellate authority has to be upheld. We do so.

10. It appears that respondent had also averred in the eviction petition that he wanted to reconstruct the building before he started his business. In fact, the respondent had incorporated Section 11(4)(iv) of the Act in the eviction petition. He had unambiguously stated in the eviction petition that he wanted to reconstruct the building before he started his business. In this context, the report of the Advocate Commissioner (Ext.C1) becomes relevant. It has been stated by the Advocate Commissioner that adequate re-inforcement or reconstruction could be carried out without disturbing the remaining portions of the building. There was enough gap or space between the walls of the adjoining rooms. Significantly, the panchayat had granted permission and license to the landlord for

reconstruction. Ext.A4 is stated to be the plan approved by the local panchayat in this connection. Ext.A5 is the receipt for payment of the requisite fee to the panchayat for according sanction for reconstruction. The trial court however proceeded as though the respondent/landlord was claiming eviction under Section 11(4)(iv). As mentioned earlier, the landlord had categorically stated that he wanted to reconstruct the building before putting it to his use. This did not in any way attract Section 11(4)(iv) of the Act. His claim for eviction was under Section 11(3) of the Act. Mere incorporation of Section 11(4)(iv) in the eviction petition did not mean that the landlord wanted eviction under Section 11(4)(iv) of the Act. The primary prayer in the petition was under Section 11(3) of the Act. In this connection, the landlord had stated that before he occupied the building, he wanted to effect reconstruction.

11. Having perused the pleadings and also having gone through the testimony of the witnesses, we are satisfied that the landlord had sought eviction under Section 11(3) of the Act. As noticed earlier, the courts below have concurrently held the need of the landlord is bonafide and genuine. Of course, the landlord wanted to reconstruct the room in such a way as to make it use worthy. We do not find any illegality or irregularity in the above finding entered by the authorities below.

12. In the above facts and circumstances, we are satisfied that no interference is warranted with the order passed by the appellate authority. No illegality, impropriety or irregularity has been pointed out by the petitioner/tenant.

Therefore, the revision petition is liable to be dismissed.

13. At this stage, learned counsel for the petitioner submits that the petitioner/tenant may be granted some reasonable time to vacate the premises. In the peculiar facts and circumstances, we are satisfied that the said request is only just and reasonable.

Therefore, this revision petition is disposed of with a direction that the execution of the order of eviction shall be kept in abeyance for a period of four months from today, on condition that the petitioner files an affidavit before the Rent Control Court undertaking to give vacant possession of the building on or before April 15, 2007. He shall also deposit the entire arrears of rent and continue to pay future rent also till he vacates the building. The affidavit shall be filed within two weeks from the date of receipt of a copy of this judgment.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

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